

In the Court of Appeals of the State of Alaska

Mitchell Lee Joseph,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13520**

Order

Petition for Rehearing

Date of Order: **4/25/2022**

Trial Court No. **4TO-18-00068CR**

Before: Chief Judge Allard, and Wollenberg and Terrell, Judges.

The State seeks rehearing of our decision in *Joseph v. State*, 2022 WL 1101814 (Alaska App. April 13, 2022) (unpublished). The State contends that we erred when we stated that Joseph “would likely be entitled to an evidentiary hearing if he raised this issue in a post-conviction relief application” because AS 12.72.020(a)(1) bars Joseph from raising this issue in a post-conviction relief application because he raised the claim in his direct appeal. We agree with the State that we did not speak precisely enough. In order to raise such a claim, Joseph would have to frame the issue as a claim of ineffective assistance of counsel.

Accordingly, IT IS ORDERED:

1. The petition for rehearing is GRANTED.
2. The first sentence of the third paragraph on page 6 of our memorandum opinion is amended by adding the following footnote:

However, we are cognizant of the fact that Joseph would likely be entitled to an evidentiary hearing if he raised this issue in a post-conviction relief application.^{FN}

FN: Of course, Joseph could not raise this claim directly in a post-conviction relief application; instead, he would be required to frame this issue as a claim of ineffective assistance of counsel.

Entered at the direction of the Court.

Clerk of the Appellate Courts


Meredith Montgomery

cc: Judge Lyle
Trial Court Clerk
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